



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23671567

Date: JAN. 10, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a scientist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo 's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a Ph.D. in technical sciences in 2012 and a specialization diploma in oilfield chemistry in 2019. At the time of filing the instant petition, the Petitioner was employed in the oil industry, focusing on the development, testing, and implementation of oil production technologies using oilfield chemicals. He indicates that he intends to continue pursuing research in these areas in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or demonstrated that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined that the Petitioner met two of the criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner asserts that he also meets two additional criteria, original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and high remuneration for services at 8 C.F.R. § 204.5(h)(3)(ix).¹ Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). We will discuss the other claimed criteria below.

¹ On appeal, the Petitioner does not contest the Director’s determination that he did not submit evidence that satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i), which relates to receipt of lesser nationally or internationally recognized awards, 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in associations, and 8 C.F.R. § 204.5(h)(3)(iii), regarding published material. Therefore, we deem these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In order to meet this criterion, a petitioner must demonstrate that his contributions are not only original, but also “of major significance in the field.” For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner claimed that he has made several original contributions of major significance in his field, as evidenced by the fact that he has published several articles and is listed as an inventor on seven patents granted to his former employer, [redacted] for inventions including a “method of [redacted] in a production well,” “[redacted] compound,” “[redacted] repair method,” and “device for [redacted] repair or [redacted] insulation.”

We note that a patent recognizes the originality of an idea, but it would not demonstrate that he made a contribution of major significance in the field. Rather, the significance of the innovation must be determined on a case-by-case basis and considered in light of other evidence in the record. The Petitioner’s initial submission provided two charts, titled respectively, [redacted] and [redacted]. Within his response to the Director’s request for evidence (RFE), the Petitioner explained that as part of the scientific research for his 2011 doctoral dissertation titled [redacted] he developed “technologies aimed at efficient operation of the [redacted] of oil wells.” He stated that “two technologies” were “successfully tested and implemented” at the production companies of [redacted], [redacted] and [redacted] resulting in an increase in oil production as shown in the submitted charts and two of the above-referenced patented technologies.

On appeal, the Petitioner maintains that the charts show that his technologies for [redacted] in [redacted] and [redacted] resulted in additional oil production and cost savings. While the Petitioner’s research appears to have been novel, the Petitioner did not establish, for example, that the technologies he developed and successfully tested in [redacted] and [redacted] oil production companies have widely impacted the field, so as to demonstrate original contributions of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

In addition, although the Petitioner provided evidence indicating the originality of his research through recommendation letters praising him for his contributions, as discussed below, the authors do not provide specific examples of contributions that are indicative of major significance or support his claim that his original contributions have already impacted the field. Although they reflect the novelty of the projects on which he worked, they do not show how his research and findings have been considered of such importance, and how their impact on the field rises to the level required by this criterion. For instance, a letter from [redacted] a petroleum engineer, provides that as part of his work as an independent expert related to maintaining the production volumes of [redacted] oil fields he met with the Petitioner, who headed the department of complications control at the [redacted] research center. He states that the Petitioner implemented projects and tested effective technologies

for protecting oil field equipment from corrosion, scaling, and wax in [] fields. He provides that the Petitioner published “several dozen” scientific articles and made several presentations at scientific conferences. [] a former petroleum engineer with “BP,” met the Petitioner at a BP-hosted scientific conference where they discussed challenges to the [] oil field, such as corrosion and the formation of inorganic and organic scales. He describes the Petitioner as “a very talented scientist and technologist” who “holds several patents for inventions” and whose areas of scientific interest are “very relevant to tackling the challenges related to oil and gas production and enhanced oil production.”

Further, the Petitioner submitted a letter from [] who indicates he worked with the Petitioner in 2014 in “selecting the effective repair and isolation technologies” for [] oil wells. He summarizes the findings of the Petitioner’s doctoral research on the development of new technology designed to isolate numerous failures of the production string, and he provides that “[t]he novelty of his research is confirmed by patents of the Russian Federation.” These three letters are not sufficiently detailed to explain how the Petitioner’s research in the area of [] in production strings and [] is considered to be an original contribution of major significance, as claimed. Overall, the letters considered above primarily contain attestations of the novelty and utility of the Petitioner’s research studies without providing specific examples of contributions that rise to a level consistent with major significance in the Petitioner’s field. The authors’ assertions do not explain how the Petitioner’s research findings have been widely implemented or relied upon by others in the field or establish that the Petitioner’s work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

Considered together, the evidence consisting of the Petitioner’s patents, excerpts of his published findings, and reference letters from his colleagues, establishes that the Petitioner has been productive in his field, but it does not demonstrate the extent to which his published data and findings have been relied upon by others in their own research. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion because the contributions in question were not major. 596 F.3d at 1122. Accordingly, the Petitioner has not sufficiently demonstrated that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.P.R. § 204.5(h)(3)(ix).

The Petitioner contends that his salary “is 2.5 times higher than the average monthly salary of workers in professional, scientific and technical activities in the Russian Federation” and “five times higher than the average monthly salary in the region of [the Petitioner’s] work – the []” [] In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field. The Petitioner’s initial submission provided his 2017, 2018, and 2019, income tax documentation reflecting that his earnings for those years averaged approximately 168,230 rubles per month. Within the Petitioner’s response to the Director’s RFE, he submitted his 2020 income tax documentation reflecting his

earnings through August 2020 averaged approximately 241,698 rubles per month.² In addition, he provided 2020 average monthly wages for “Professional, scientific and technical activities (section M)” from the Federal Service of State Statistics (FSSS) showing the average monthly wage in Russia of 80,077 rubles and in the [redacted] of 56,269 rubles.

On appeal, the Petitioner submits four on-line articles to demonstrate that his salary was high relative to others in the field. However, we note that the articles appear to be English translations but are not accompanied by a copy of the original untranslated articles corresponding to these materials.³ Moreover, we will not consider new eligibility claims or evidence in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We have therefore limited our review to the materials in the record at the time of the Director’s decision.

Although the Petitioner likens his salary to the average wages in the general field of professional, scientific, and technical activities, the Petitioner did not show that he commands a high salary “in relation to others in the field,” such as other petroleum scientists in Russia. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. US. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Furthermore, the salary information from FSSS reflects the average wages rather than the high salaries of petroleum scientists in Russia. Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954

² Because this criterion requires evidence that the Petitioner “has commanded” a high salary in the past, and because the Petitioner must establish eligibility at the time of filing (September 2020) in accordance with 8 C.F.R. §103.2(b)(1), we will evaluate evidence that pre-dates the filing of the petition.

³ Regarding the submission of foreign language documents, the regulation provides that the Petitioner shall submit such documents accompanied by a full English language translation. See 8 C.F.R. § 103.2(b)(3). It does not indicate that English language translations may be provided in lieu of foreign language documents.

(Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.